

ATCP 70.10 (6) EGG PACKAGING AND LABELING. The packaging and labeling of eggs shall be done in compliance with the requirements of ss. ATCP 88.32, ATCP 88.34, and ATCP 88.38.

SECTION 6. ATCP 75 (appendix) (3-201.11) (H) is created to read:

ATCP 75 (appendix) (3-201.11)(H) EGGS shall be: (1) from an egg handler complying with the requirements of ATCP 88 and holding a FOOD PROCESSING PLANT license under s. 97.29, Stats.,

(2) From an egg handler complying with the LAW of another state, or

(3) Sold directly to the consumer by an egg producer exempted under s.97.28, Stats., and s. ATP 88.02 and selling nest-run or washed, candled, graded, sized, or packaged eggs from a flock of not more than 150 laying birds owned by the producer.

SECTION 7. ATCP 75 (appendix) (3-202.13) is amended to read:

ATCP 75 (appendix) (3-202.13) Eggs.

EGGS shall be received clean and sound and may not exceed the restricted egg tolerances as specified in s. ~~ATCP 88.06 (1)~~ ATCP 88.26. ^P

SECTION 8. ATPC 88 is repealed and recreated to read:

Chapter ATCP 88

EGGS

Subchapter I-General Provisions

ATCP 88.01 Definitions.

ATCP 88.02 Licensing and registration.

ATCP 88.04 Federal registrations and records.

Subchapter II-Egg Facilities

- 1 ATCP 88.06 Egg handling and storage facilities.
- 2 ATCP 88.08 Egg handling rooms.
- 3 ATCP 88.10 Operations water.
- 4 **Subchapter III-Equipment and Utensils**
- 5 ATCP 88.12 Equipment and utensil requirements.
- 6 ATCP 88.14 Cleaning and sanitizing equipment and utensils.
- 7 **Subchapter IV-Egg Handling Operations**
- 8 ATCP 88.16 Personnel standards.
- 9 ATCP 88.18 Temperature standards.
- 10 ATCP 88.20 Egg cleaning and storage operations.
- 11 ATCP 88.22 Candling.
- 12 ATCP 88.24 Grading standards for chicken eggs.
- 13 ATCP 88.26 Minimum tolerance standards.
- 14 ATCP 88.28 Restricted eggs.
- 15 ATCP 88.30 Shell egg protection.
- 16 **Subchapter V-Packing and Labeling**
- 17 ATCP 88.32 Egg packing.
- 18 ATCP 88.34 Egg labeling.
- 19 ATCP 88.36 Labeling of baluts.
- 20 ATCP 88.38 Deceptive practices.
- 21 **Subchapter VI-Recordkeeping, Recall Planning, and Enforcement**
- 22 ATCP 88.40 Dealers buying eggs from producers; receipts.
- 23 ATCP 88.42 Recall plan.

ATCP 88.44 Enforcement.

SUBCHAPTER I

GENERAL PROVISIONS

ATCP 88.01 Definitions. In this chapter:

(1) “Ambient temperature” means the temperature of the air surrounding eggs or packages of eggs.

(2) "Balut" means a fertile egg which is incubated for a period of time shorter than is necessary for hatching.

(3) “Candling” means carefully examining, in a dark place, the interior and exterior of a whole egg that is placed in front of a strong light source.

(4) "Check" means an egg that has a broken shell or crack in the shell but has intact shell membranes and no leaking of contents.

(5) “Community-supported agriculture business” means a farm with which individuals contract to regularly receive two or more different agricultural products, which may include eggs, originating from the farm.

(6) “Consumer” means an individual purchasing eggs which will be consumed by the individual, their family, or their non-paying guests.

(7) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(8) "Dirty" means an egg, with an unbroken shell, that has either of the following:

(a) Dirt or foreign material adhering to the shell's surface.

(b) Prominent or moderate stains covering more than 1/32 of the shell surface area if localized, or 1/16 of the shell surface area if scattered.

1 (9) "Egg" means the shell egg of the domestic chicken, Gallus gallus domesticus; turkey,
2 duck, goose, guinea or other avian species whose eggs are consumed by humans.

3 (10) "Egg handler" means a person who washes, grades, sizes, candles, packages, stores,
4 handles, or otherwise prepares eggs for sale, but does not include a person who handles nest-run
5 eggs and otherwise prepares nest-run eggs for sale..

6 (11) "Egg producer" means a person who sells eggs only laid by birds owned by that
7 person.

8 (12) "Egg sales route" means one or more residences inhabited by consumers who
9 regularly buy eggs from an egg producer traveling to the residences.

10 (13) "Farmers' market" means a common facility where two or more farmers or growers
11 gather on a regular basis to sell raw agricultural commodities, eggs, and processed foods which
12 they produce, directly to consumers.

13 (14) "Federal egg grading act" means the agricultural marketing act of 1946, as amended
14 (7 USC 1621 et seq.), and U.S. standards, grades and weight classes for shell eggs issued under
15 the act.

16 (15) "Federal egg products inspection act" means the egg products inspection act of 1970
17 (21 USC 1031-1056), and regulations issued under the act in 7 CFR part 57 and 9 CFR part 590.

18 (16) "Federal egg safety rule" means regulations in 21 CFR 16.5 (a) (5) and 21 CFR part
19 118, and enforced by the U.S. food and drug administration.

20 (17) "Inedible egg" means an egg in which any of the following is present:

21 (a) Black rot.

22 (b) Yellow rot.

23 (c) White rot.

1 (d) Mixed rot, also known as addled egg.

2 (e) Sour egg.

3 (f) Green egg white.

4 (g) Stuck yolk.

5 (h) Mold.

6 (i) Mustiness.

7 (j) A blood ring observable upon candling.

8 (k) An embryo chick at or beyond the blood ring stage, unless such egg is classified as a
9 balut.

10 (l) Adulteration as defined under s. 97.02, Stats.

11 (18) "Incubator reject" means an egg that has been subjected to incubation and has been
12 removed from incubation during the hatching operations as infertile or otherwise unhatchable.

13 (19) "Leaker" means an egg that has a crack or break in the shell and shell membranes, to
14 the extent that the egg contents are exposed or are exuding or free to exude through the shell.

15 (20) "Loss" means an egg that is unfit for human food because it is smashed or broken so
16 that its contents are leaking; or is overheated, frozen, or contaminated.

17 (21) "Nest-run" means eggs that do not receive more than minimal washing, and are not
18 graded or candled before sale.

19 (22) "Official egg products plant" means a place of business, regulated by the U.S.
20 department of agriculture under the federal egg products inspection act, that manufactures egg
21 products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing,
22 cooling, freezing, drying, or packaging egg products.

23 (23) "Package" has the meaning given in s. ATCP 90.01 (16).

1 *Note:* A “package” of eggs is the retail package in which the eggs are sold to a
2 consumer. A “package” is different from a shipping container.

3 (24) “Packing” means placing eggs into a package or shipping container.

4 (25) “Person” means an individual, corporation, partnership, limited liability company,
5 cooperative, association or other business entity.

6 (26) “Restricted egg” means any egg that is a check, dirty, incubator reject, inedible,
7 leaker or loss.

8 (27) “Shipping container” means any box, case, rack or other container used to distribute
9 packages of eggs, or bulk or loose eggs, to a seller or institutional purchaser of eggs.

10 (28) “Storage” means the holding of eggs before sale for longer than 24 hours.

11 (29) “U.S. standards, grades, and weight classes for shell eggs” means standards
12 maintained by the agricultural marketing service of the U.S. department of agriculture and
13 published in U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS 56), July 20,
14 2000.

15 (30) “U.S. Consumer Grade B” means eggs which are, on the basis of a sample obtained
16 in accordance with 7 CFR 56.4, at least 90 percent grade B quality or better, of which not more
17 than 10 percent are checks and not more than 0.50 percent (at origin) or 1 percent (at destination)
18 are leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss
19 may not exceed 0.30 percent. Other types of loss are not permitted.

20 (31) “Warehouse” has the meaning given in s. 97.27(1)(b), Stats..

21 **ATCP 88.02 Licensing and Registration (1) FOOD PROCESSING PLANT LICENSE**

22 REQUIRED. Except as provided under sub (2), no egg handler may conduct egg handling
23 activities, including sales of eggs to a licensed egg handler, retail food establishment, food
24 processing plant, or community-supported agriculture business, without a valid license issued by

1 the department for a food processing plant under s. 97.29, Stats. The license holder shall meet all
2 requirements of s. ATCP 70.03.

3 (2) LICENSE EXEMPTIONS. A food processing plant license is not required under s. 97.29,
4 Stats., or this section, for:

5 (a) An egg producer collecting, packing and storing eggs from a flock of not more than
6 150 laying birds and who only sells the eggs directly to consumers at the premises where the
7 eggs were laid, a farmers' market or on an egg sales route. The eggs may or may not be washed,
8 candled and graded, and shall be labeled as ungraded and uninspected and packages containing
9 the eggs shall have the seller's name, address, pack date, and a "sell-by" date not more than 30
10 days after the pack date on them.

11 (b) An egg producer collecting, packaging, and storing nest-run eggs from a flock of
12 laying birds owned by the producer and who is registered with the department under sub. (4), and
13 who sells the nest-run eggs to an egg handler. The producer shall not sell obviously restricted
14 eggs.

15 (3) FOOD WAREHOUSE LICENSE REQUIRED. No egg producer or egg handler may receive
16 eggs from another egg producer or egg handler and store the eggs for more than 24 hours before
17 selling them without a valid license issued by the department for a food warehouse under s.
18 97.27, Stats.

19 (4) REGISTRATION. An egg producer, exempt from food processing plant licensing
20 requirements under sub. (2)(b), shall register with the department before selling eggs.
21 Registration may occur in any license year ending March 31, and the registration expires at the
22 end of the license year. Registration shall be in writing on a form provided by the department or
23 online at <http://datcp.wi.gov>. There shall be no fee to register.

(5) RETAIL FOOD ESTABLISHMENT LICENSE. Except for egg producers selling eggs directly to consumers at the egg producer's premises or as part of a community-supported agriculture business operated by the egg producer, no egg producer may sell eggs directly to consumers, including sales at a farmers' market or on an egg sales route, without a valid license issued by the department for a retail food establishment under s. 97.30, Stats. The license holder shall meet all requirements of s. ATP 75.03.

ATCP 88.04 Federal registrations and records. (1) REGISTRATION REQUIRED.

(a) An egg producer, licensed or registered with the department, shall also be registered with the U.S. food and drug administration, if required under 21 CFR 118.11 of the federal egg safety rule.

(b) An egg producer or egg handler who grades and packs eggs for the ultimate consumer, and is licensed with the department, shall also be registered with the U.S. department of agriculture, if required under 21 CFR 57.690 of the federal egg products inspection act.

(2) REGISTRATION RECORDS. (a) Egg handlers who receive eggs from producers who own 3,000 or more laying birds shall maintain records verifying that those producers have registered with the U.S. food and drug administration as required by the federal egg safety rule.

(b) An egg handler who sells eggs from a flock of 3,000 or more laying birds directly to the consumer shall register with the U.S. department of agriculture as required by the federal egg products inspection act.

SUBCHAPTER II

EGG FACILITIES

ATCP 88.06 Egg handling and storage facilities. (1) CONSTRUCTION AND MAINTENANCE; GENERAL. Buildings and facilities used in the operation of an egg handling

1 facility shall be of sound construction, and shall be capable of being maintained in a clean and
2 sanitary condition. The interior and exterior portions of an egg handling facility, and the
3 premises on which the egg handling facility is located, shall be kept free of unhealthful or
4 unsanitary conditions, and shall be maintained in compliance with this chapter. The premises
5 surrounding an egg handling facility shall be well drained and shall be kept in a clean and
6 orderly condition. The premises shall be kept free of accumulations of trash, garbage, and other
7 potential health nuisances.

8 (2) FLOORS, WALLS AND CEILINGS. Floors, walls and ceilings in an egg handling facility
9 shall be kept clean and in good repair. Floors, walls and ceilings in egg handling areas, toilet
10 rooms, and areas used for the cleaning or storage of equipment or utensils shall be constructed of
11 smooth, impervious and easily cleanable materials. This does not prohibit the use of easily
12 cleanable anti-slip floors. Walls and ceilings in egg handling areas shall be light colored. The
13 junctions of walls and floors in egg handling areas shall be coved to facilitate cleaning.
14 Floors which are waterflushed for cleaning, or on which water or fluid wastes are discharged,
15 shall have an adequate number of floor drains and be adequately sloped to ensure proper
16 drainage to the floor drains.

17 (3) DOORS AND WINDOWS. Doors, windows, skylights, transoms and other openings to
18 the outside shall be tight-fitting, free of breaks, and effectively screened or protected against the
19 entry of rodents, insects, birds and other animals. External doors, other than overhead doors in
20 delivery areas, shall be self-closing. External doors shall be kept closed when not in use.

21 (4) LIGHTING. (a) Lighting in every area of an egg handling facility, whether natural or
22 artificial, shall be sufficient for the purpose for which the area is used.

(b) Artificial lights in egg handling areas shall be equipped with protective shields or shatter resistant bulbs.

(c) The lighting of the interior of an egg handling facility shall be adequate to disclose dirty eggs or packing materials and egg or packing material defects that may affect the safety, sanitation, or quality of eggs. Egg handling areas shall be illuminated to the following levels measured 3 feet above the floor:

1. Not less than 20 foot candles (215 lux) in egg handling areas, equipment and utensil cleaning areas, handwashing areas and toilet areas.

2. Not less than 10 foot candles (108 lux) in egg storage areas.

(5) VENTILATION, HEATING AND COOLING. (a) An egg handling facility, including egg handling areas, locker rooms, toilet rooms, employee break rooms, and garbage or rubbish storage areas, shall be adequately ventilated, heated and cooled as needed to meet the applicable temperature requirements in s. ATCP 88.18.

(b) Ventilation shall be adequate to keep the egg handling facility free of excessive heat, condensation, vapors, obnoxious odors, smoke and fumes.

(c) Heating, cooling and ventilating systems, including ducts and pipes over egg handling areas, shall be designed or located to prevent conditions whereby drips or condensate may contaminate eggs or egg packages. Intake fans shall be equipped with filters that are readily removable for cleaning and replacement, and shall be kept clean. Ventilation ducts and intake or exhaust fans shall be kept clean and in good repair and shall be screened or louvered to exclude dust and insects.

1 (6) TOILET FACILITIES. (a) A sufficient number of sanitary toilets to accommodate all
2 employees, in accordance with applicable state and local regulations, shall be provided in
3 convenient locations.

4 (b) Toilet rooms shall be completely enclosed, well-lighted and equipped with
5 tight-fitting doors. Toilet rooms and fixtures shall be easily cleanable, and shall be kept clean
6 and in good repair. Toilet rooms contiguous with egg handling facilities shall be equipped with
7 self-closing doors, separately vented to the outside, equipped with an exhaust fan capable of
8 creating a negative pressure within the toilet facility, and shall not open directly into an egg
9 handling area.

10 (c) Handwashing facilities shall be located in or adjacent to every toilet room.
11 Handwashing facilities serving toilet rooms shall include hot and cold running water, soap in a
12 soap dispenser, and a sanitary single-service means of drying the hands. A sign directing
13 employees to wash their hands shall be prominently posted in every toilet room used by
14 employees. Handwashing facilities serving toilet rooms shall comply with all of the following
15 requirements if they are installed after November 1, 2009, or if they are located in an egg
16 handling facility that is initially licensed or licensed to a new operator after November 1, 2009:

17 1. The facility shall be served by hot and cold running water provided through a mixing
18 valve or combination faucet, or by tempered potable water.

19 2. Faucets shall be of a type which are not hand-operated. If a self-closing, slow-closing
20 or metering faucet is used, that faucet shall provide a flow of water for at least 15 seconds
21 without the need to reactivate the faucet

22 (d) An easily cleanable covered trash receptacle and an adequate supply of toilet tissue
23 shall be available in every toilet room at all times.

1 (7) CLEANING FACILITIES. (a) If equipment, utensils or egg packages are wet-cleaned or
2 sanitized manually, the egg handling facility shall be equipped with wash and rinse sinks which
3 are suitable for all manual cleaning and sanitizing operations. Sinks shall be conveniently
4 located and adequate in number. Each sink shall be constructed of stainless steel or of one or
5 more other materials approved by the department. Each sink shall have at least 2 compartments.

6 (b) Every sink compartment shall be large enough to accommodate the immersion of at
7 least 50% of the largest item to be cleaned or sanitized in the sink. Every sink compartment shall
8 be served by hot and cold running water, and shall be cleaned before each use.

9 (c) Drain boards shall be provided in connection with every sink. Drain boards shall be
10 large enough to accommodate soiled equipment and utensils before washing, and clean
11 equipment and utensils after the drain boards are cleaned and sanitized. Drain boards shall be
12 located and constructed so that they do not interfere with washing and sanitizing operations.
13 This paragraph does not prohibit the use of easily movable dish tables as drain boards if the dish
14 tables comply with this paragraph.

15 (d) Brushes and cleaning tools shall be kept clean and in good repair. Wiping cloths used
16 to clean equipment and utensils shall be cleaned, sanitized and dried daily, and shall be stored in
17 an approved sanitizing solution between uses during the processing day. Sanitizing solutions for
18 wiping cloths shall be changed at least daily. Wiping cloths used to clean egg contact surfaces of
19 equipment and utensils shall not be used for any other purpose. Single service disposable towels
20 may be used in place of re-usable cloths if they are discarded after use.

21 (e) If a mechanical system is used to clean or sanitize equipment, utensils or egg
22 containers, the mechanical system shall be designed, installed and maintained so that it is fully
23 effective for the purpose used.

1 (8) PLUMBING SYSTEM AND SEWAGE DISPOSAL. Sewage and waste materials from an egg
2 handling facility shall be removed in a sanitary manner, in compliance with applicable state and
3 local regulations. All plumbing, plumbing fixtures, and equipment shall be designed, installed
4 and maintained to prevent backflow, backsiphonage and cross-connections.

5 *Note:* Plumbing and plumbing fixtures are subject to the requirements of chs. SPS 381 to
6 387, enforced by the department of safety and professional services.

7 (9) GARBAGE AND REFUSE DISPOSAL. (a) Garbage and refuse shall not be allowed to
8 accumulate in or around an egg handling facility. Garbage and refuse shall be removed as often
9 as necessary to maintain the premises in a clean and sanitary condition.

10 (b) A separate room or a designated area for the accumulation of garbage and refuse must
11 be provided in facilities which do not have a system for the daily removal or destruction of
12 garbage and refuse. Garbage and refuse storage areas shall be constructed and maintained so that
13 they do not attract or harbor insects, rodents or other animals.

14 (c) Garbage and refuse shall be held in durable, leak-proof, easily cleanable, and pest-
15 resistant containers. Containers used to hold inedible waste egg products or materials soiled with
16 eggs shall be kept covered with tight-fitting lids, and shall be cleaned when necessary to prevent
17 insanitary conditions.

18 (d) Garbage and refuse shall not be burned on the premises, except in compliance with
19 state and local laws. Garbage and refuse shall not be burned on the premises if burning may
20 contaminate eggs.

21 (10) CONTROL OF PESTS. (a) Effective measures shall be taken to control insects, rodents
22 and other pests in an egg handling facility. Pesticides and other hazardous substances shall not
23 be stored or used in a manner which may contaminate eggs, or which may constitute a hazard to

employees or the public. Pesticides shall not be stored, handled or used in a manner inconsistent with label directions, or in a negligent manner.

(b) All domestic animals shall be kept out of egg handling areas.

ATCP 88.08 Egg handling rooms (1) EGG WASHING AND EGG GRADING ROOMS (a)

Egg washing and grading rooms shall be kept clean during washing, candling, grading and packaging operations and shall be thoroughly cleaned at the end of each day's operations.

(b) Areas in which manual candling is done shall be dark enough to permit accurate determinations of egg quality.

(2) EGG STORAGE ROOMS. (a) Egg storage areas shall be capable of maintaining eggs at ambient temperatures required under s. ATCP 88.18, regardless of reasonably foreseeable external temperatures.

(b) Every egg storage area shall be equipped with one or more accurate temperature measuring devices to monitor compliance with temperature standards under s. ATCP 88.18. The ambient temperature shall be monitored in one or more representative locations of the egg storage facility.

(c) An egg storage area shall be kept clean at all times. Storage areas, equipment and utensils and stored eggs shall be arranged so that all parts of the egg storage area can be effectively cleaned and inspected.

(d) Eggs shall be stored such that the packaged eggs are protected from moisture, dust, and other contamination, and such that cleaning of the storage area, including the floor, is not impeded.

ATCP 88.10 Operations water. (1) Operations water shall be obtained from a source that complies with NR 811 or 812.

1 (2) Operations water shall be available in consistently adequate quantity, and shall
2 comply with the health related drinking water standards in NR 809.

3 (3) If an egg handling facility operator obtains operations water from a privately owned
4 water system, the operator shall sample that water at least once annually. The operator shall
5 have each sample tested by a laboratory certified under ATCP 77, for compliance with the
6 microbiological standards under s. NR 809.30.

7 (4) An egg handling facility operator shall keep on file, for at least one year, the results of
8 all microbiological and other tests conducted on operations water sampled at the egg handling
9 facility.

10 SUBCHAPTER III

11 EQUIPMENT AND UTENSILS

12 **ATCP 88.12. Equipment and utensil requirements.** (1) CONSTRUCTION AND
13 MAINTENANCE; GENERAL. (a) Equipment and utensils shall be of sanitary design and
14 construction. Equipment and utensils shall be readily accessible for cleaning and inspection and
15 shall be constructed so that items can be easily cleaned. Equipment and utensils shall be kept
16 clean and in good repair.

17 (b) EGG CONTACT SURFACES. Egg contact surfaces of equipment and utensils shall be
18 constructed of stainless steel or of one or more other materials which are smooth, impervious,
19 nontoxic, non-corrodible, nonabsorbent and durable under normal use conditions. Egg contact
20 surfaces shall be easily cleanable, and shall be free of breaks, open seams, cracks or similar
21 defects. Egg contact surfaces shall not impart any odor, color, taste or adulterating substance to
22 food. Egg contact surfaces shall be readily accessible for manual cleaning.

1 (c) SINGLE-SERVICE ARTICLES. Single-service articles shall be stored in the original
2 containers in which they were received, or in other closed containers which will protect them
3 from contamination before use. Single-service articles shall not be re-used.

4 (2) ADEQUACY AND ACCURACY OF MEASURING DEVICES, INSTRUMENTS, AND CONTROLS.
5 Every cold storage compartment used to store or hold eggs shall be equipped with a thermometer
6 or other device which accurately indicates the ambient temperature in the compartment.
7 Instruments and controls used for measuring, regulating and recording air or wash water
8 temperatures, humidity, or wash water pH shall be adequate for the intended use.

9 (3) LUBRICATION. Equipment shall be designed and constructed so that gear and bearing
10 lubricants do not come in contact with eggs or egg contact surfaces. Only food grade lubricants
11 may be used in equipment if incidental egg contact may occur.

12 (4) LOCATION AND INSTALLATION OF EQUIPMENT. Equipment which cannot be easily
13 moved shall be installed in a manner which prevents liquid or debris from accumulating under or
14 around the equipment. Equipment shall be installed so that there is adequate clearance on all
15 sides for cleaning and maintenance. This does not apply to that portion of a tank or container
16 which is designed and installed to protrude into or through the wall or ceiling of an egg handling
17 facility. Air intake vents for egg storage containers shall be located in handling areas or shall be
18 properly filtered.

19 (5) EQUIPMENT FOR CANDLING, GRADING AND WEIGHING EGGS. (a) Egg candling lights
20 shall be strong enough to disclose dirty eggs and to permit accurate determinations of egg
21 quality.

(b) If automated grading equipment is used to detect blood inside of eggs or cracked shells or check eggs, the equipment shall be calibrated and adjusted for sensitivity so that the graded eggs comply with applicable grade standards.

(c) Equipment used to weigh eggs shall be calibrated at least annually for accuracy.

ATCP 88.14 Cleaning and sanitizing equipment and utensils. (1) CLEANING AND SANITIZING EQUIPMENT AND UTENSILS; GENERAL. Except as provided in sub. (3):

(a) All egg contact surfaces of equipment and utensils shall be cleaned and sanitized after each day's use, or more frequently if necessary.

(b) Sanitizers and methods used to sanitize equipment shall comply with s. ATCP 70.11.

(c) The department may approve alternative cleaning and sanitizing procedures under sub. (2).

(2) ALTERNATIVE CLEANING AND SANITIZING PROCEDURES. (a) An egg handler may request the department to approve alternative cleaning and sanitizing procedures under this section. The department shall approve alternative cleaning and sanitizing procedures if the department determines that those alternative procedures will effectively prevent egg contamination and ensure the microbiological safety of the eggs.

(b) The egg handler shall submit a written request to use alternative cleaning and sanitizing procedures as allowed under this subsection. The request shall include all of the following, and any other information required by the department:

1. A clear and complete description of the affected egg handling equipment, including any continuously-operated equipment. The description shall identify sanitary design features that are relevant to the proposed cleaning and sanitizing procedures.

1 2. The types of eggs handled with the affected equipment, and the temperatures to which
2 the eggs will be exposed during handling.

3 3. A clear and complete description of the alternative cleaning and sanitizing procedure,
4 including cleaning and sanitizing equipment, frequency, methods, materials, and relevant process
5 parameters such as time and temperature. The description shall include a flow diagram of the
6 cleaning and sanitizing procedure.

7 4. A written statement, by the egg handler, that the alternative cleaning and sanitizing
8 procedure has been evaluated and determined to be effective in preventing egg contamination
9 and ensuring the microbiological safety of the eggs. The written statement shall be based on a
10 written plan under subp. 5.

11 5. A written plan, prepared by qualified personnel, to ensure that the alternative cleaning
12 and sanitizing procedure will be effective in preventing egg contamination and ensuring the
13 microbiological safety of eggs. The written plan shall identify and assess foreseeable hazards,
14 identify critical control points, identify parameter limits associated with the critical control points
15 which must be met to ensure safety, and identify monitoring procedures and controls to ensure
16 that the procedure is effective.

17 (c) The department shall grant or deny a request under par. (a), in writing, within 60 days
18 after it receives a complete request, except that the department may give written notice extending
19 the action deadline for reasons stated in the notice.

20 (d) The department may qualify or limit its approval under par. (c), as it deems
21 appropriate. The department may withdraw its approval for cause, including information that
22 casts doubt on the efficacy or implementation of the approved procedure.

1 (e) An egg handler that implements an alternative cleaning and sanitizing procedure
2 approved under this subsection shall do all of the following:

3 1. Control and monitor the procedure to ensure that it is implemented as approved, and is
4 effective in preventing egg contamination and ensuring the microbiological safety of the eggs.

5 2. Promptly notify the department of any material deviation from the approved procedure,
6 and any information that casts doubt on the efficacy of the procedure.

7 3. Collect and retain data and records to document, on a continuing basis, the
8 implementation and efficacy of the approved procedure. The operator shall retain the data and
9 records for at least 90 days, and shall make them available upon request for inspection and
10 copying by the department.

11 (3) STORAGE OF CLEAN EQUIPMENT AND UTENSILS. Equipment and utensils, unless stored
12 in an approved sanitizing solution, shall be stored so as to drain dry. Equipment and utensils
13 shall be protected from contamination prior to use.

14 SUBCHAPTER IV

15 EGG HANDLING OPERATIONS

16 **ATCP 88.16 Personnel standards.** (1) **CLEANLINESS.** Persons engaged in egg handling
17 shall maintain a high degree of personal cleanliness, and shall observe good hygienic practices
18 during all working periods. Persons engaged in egg handling shall wash their hands before
19 beginning work and upon returning to work after using toilet facilities, eating, smoking or
20 engaging in other activities which may contaminate the hands. Persons engaged in egg handling
21 shall keep their fingernails clean and neatly trimmed.

22 (2) **CLOTHING AND JEWELRY.** Persons in egg handling areas shall wear clean, washable
23 outer garments. Persons working in egg handling areas shall remove all jewelry from their hands

1 and fingers before having any direct manual contact with eggs or egg contact surfaces. Jewelry
2 shall not be worn in a manner which creates a risk of egg contamination. This subsection does
3 not apply to plain band wedding rings.

4 (3) EMPLOYEE HEALTH. No person who, by medical examination or supervisory
5 observation, has, or is reasonably suspected of having, any of the following conditions may work
6 in an egg handling plant in any capacity that may result in the contamination of eggs, or in the
7 contamination of equipment or utensils used to process or handle eggs:

8 (a) A communicable disease.

9 (b) Any symptom of an acute gastrointestinal illness.

10 (c) A discharging or open wound, sore or lesion on the hands, arms or other exposed
11 portions of the body.

12 (4) CONSUMPTION OF FOOD OR BEVERAGES, AND USE OF TOBACCO. No person may
13 consume food or beverages or use tobacco in any egg handling area, or in any area where egg
14 processing equipment or utensils are cleaned or stored. Employees may not consume food or
15 beverages or use tobacco except in designated areas which are separated from egg handling
16 areas. This subsection does not prohibit a sanitary drinking water fountain in an egg handling
17 area.

18 **ATCP 88.18 Temperature standards.** (1) TEMPERATURE BEFORE PACKING. Eggs that
19 are held by an egg handler before packing for more than 36 hours after they are laid shall be kept
20 at an ambient temperature of 45° Fahrenheit (7° Celsius) or less. Eggs that have been
21 refrigerated may be held at room temperature, for up to 36 hours immediately before washing, to
22 decrease the risk of thermal checks caused by washing cold eggs with warm water.

23 *Note:* It is recommended that eggs be processed and packed as soon as practicable and
24 within 5 days after they are laid.

1 (2) TEMPERATURE AFTER PACKING. Eggs which have been packed by an egg handler
2 shall be kept at an ambient temperature of 45° Fahrenheit (7° Celsius) or less at all times,
3 including while they are being transported.

4 (3) TEMPERATURE DURING TRANSPORT. During transport to a retail food establishment
5 and upon receipt at a retail food establishment eggs shall be held at an ambient air temperature of
6 45° Fahrenheit (7° Celsius) or less.

7 *Note:* Mechanical refrigeration is recommended for eggs that are in transport for more
8 than 4 hours.

9
10 (4) TEMPERATURE STANDARDS FOR RETAIL SALE. Eggs held for retail sale shall be held at
11 an ambient temperature of 41° Fahrenheit (5° Celsius) or less.

12 (5) TEMPERATURE STANDARDS FOR BALUTS. Baluts must be refrigerated upon removal
13 from incubation and maintained at a temperature of 41° Fahrenheit or less while transported,
14 stored, or held for retail sale.

15 (6) SALE OF FROZEN EGGS PROHIBITED. No person may sell or offer for sale any shell
16 eggs that have been frozen.

17 **ATCP 88.20 Egg cleaning and storage operations.** (1) Eggs shall be cleaned to remove
18 debris and stains.

19 (2) Dirty eggs may be dry cleaned with an egg brush or rubbed with a sanding sponge
20 and sand paper.

21 (3) Compounds used to clean or sanitize eggs shall be either generally recognized as safe
22 under 21 CFR parts 182 and 184, and used in accordance with good manufacturing practices
23 under 21 CFR 182.1; approved by the U.S. food and drug administration as a food additive under
24 21 CFR parts 172 – 174, and 180, and used in accordance with the conditions of this approval;
25 approved by the U.S. food and drug administration as a sanitizer under 21 CFR 178.1010, used at

1 concentrations specified therein, and registered for this use with the U.S. environmental
2 protection agency; or otherwise approved by the department.

3 (4) Ultraviolet light may be used to sanitize eggs in accordance with 21 CFR 179.39.

4 (5) Water used to clean shell eggs shall be:

5 (a) At least 20° Fahrenheit warmer than the eggs, and not colder than 90° Fahrenheit.

6 (b) Changed to maintain sanitary conditions at least every 4 hours, by either continuous
7 water exchange or by completely emptying and refilling the wash tank, and at the end of each
8 shift by emptying and refilling the wash tank.

9 (6) Eggs shall not be left standing or soaking in cleaning water.

10 (7) Washed eggs shall be dry before they are placed in packages or shipping containers.

11 (8) Dirty eggs that cannot be cleaned shall be discarded as restricted eggs.

12 (9) An egg handling facility operator shall handle and store eggs:

13 (a) In a safe and sanitary manner, and under sanitary conditions, to protect the safety and
14 wholesomeness of the eggs.

15 (b) In a neat and orderly manner, so that the eggs are readily accessible for inspection and
16 movement, and so that the egg storage area can be readily inspected and cleaned. The amount of
17 eggs stored in an egg storage area shall not exceed the reasonable capacity of that area.

18 **ATCP 88.22 Candling.** CANDLING REQUIREMENTS. A candling light or automated
19 grading equipment is required for determining the interior and exterior quality of eggs. Egg
20 candling lights and candling light areas shall meet the requirements of ss. ATCP 88.12 (5) (a) to
21 (c). A candling light must be used to verify the performance of automated grading equipment.

22 **ATCP 88.24 Grading standards for chicken eggs.** (1) GRADING STANDARDS FOR
23 CHICKEN EGGS. Except for chicken eggs clearly labeled as "ungraded" as required under s.

ATCP 88.34 (1) (b), chicken eggs sold or distributed in this state by an egg handler licensed under s. ATCP 88.02 shall be labeled as grade AA, A, or B, and shall conform to the U. S. grade standards specified for those grades under the federal egg grading act and the U.S. standards, grades, and weight classes for shell eggs.

(2) CHICKEN EGG SIZES. Except for chicken eggs clearly labeled as “ungraded” as required under s. ATCP 88.34 (1) (b), chicken eggs sold or distributed in this state by an egg handler licensed under s. ATCP 88.02 shall be labeled as Jumbo, Extra Large, Large, Medium, Small or Peewee, and shall conform to the United States size standards specified for those sizes under the federal egg grading act and U.S. standards, grades, and weight classes for shell eggs and shown in the table below.

Size or weight class	Minimum net weight per dozen (ounces)	Minimum net weight per 30 dozen (pounds)	Minimum net weight for individual eggs at rate per dozen (ounces)
Jumbo	30	56	29
Extra large	27	50.5	26
Large	24	45	23
Medium	21	39.5	20
Small	18	34	17
Peewee	15	28	---

Note: United States grades and sizes are fully described in “United States Standards, Grades, and Weight Classes for Shell Eggs” (AMS 56), July 20, 2000, published by the Agricultural Marketing Service of the United States Department of Agriculture. A copy of the standards may be accessed online at:
<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004376>

ATCP 88.26 Minimum tolerance standards. (1) LIMITATIONS ON SALE AND DISTRIBUTION. No person may sell or distribute for sale as human food any eggs that fail to meet tolerance standards for U.S. Consumer Grade B eggs under U.S. standards, grades, and weight classes for shell eggs, regardless of whether the eggs are labeled as graded or ungraded eggs. No individual case of Grade B quality eggs may contain a percentage of grade B quality eggs that is

1 more than 10 percentage points greater than the minimum permitted for the lot average. This
2 section does not apply to eggs which are clearly labeled as "ungraded" as required under s.
3 ATCP 88.34 (1) (b) and which the egg producer sells directly to a consumer on the premises
4 where the eggs are produced or as part of a community-supported agriculture business.

5 **ATCP 88.28 Restricted eggs.** (1) PROHIBITION AGAINST SALE OF RESTRICTED EGGS. (a)
6 Except as provided in par. (b), no person shall buy, sell, or transport, or offer to buy or sell, or
7 offer or receive for transportation any restricted eggs, and no egg handler shall possess any
8 restricted eggs or use any restricted eggs in the preparation of human food.

9 (b) Egg producers collecting eggs from a flock of more than 3,000 laying birds shall only
10 sell, transport, possess, or use restricted eggs in compliance with 7 CFR 57.100 of the federal egg
11 products inspection act. Egg producers collecting eggs from a flock of 3,000 or fewer laying
12 birds shall:

13 1. Sell no more edible restricted eggs than the amount allowed by the tolerances in the
14 official standards for U.S. Consumer Grade B shell eggs.

15 2. Sell checks and dirties only on the premises where the eggs are produced directly to
16 consumers for use by the consumer and the consumer's non-paying guests.

17 (2) DISPOSITION OF RESTRICTED EGGS. Egg producers collecting eggs from a flock of
18 more than 3,000 hens shall dispose of restricted eggs in compliance with 7 CFR 57.720 and
19 maintain records as required in 7 CFR 57.200 of the federal egg products inspection act. Egg
20 producers collecting eggs from a flock of 3,000 or fewer hens shall dispose of restricted eggs by:

21 (a) Shipping checks and dirties directly or indirectly to an official egg products plant for
22 processing.

1 (b) Crushing and placing loss and inedible eggs in a container containing a sufficient
2 amount of approved denaturant or decharacterizing substance, as approved the department. The
3 denatured and decharacterized product shall be labeled "Restricted eggs. Not to be used as
4 human food."

5 (3) DISPOSITION OF PACKED EGGS EXCEEDING RESTRICTED EGG TOLERANCES. Eggs which
6 are placed in a package for the ultimate consumer and which have been found to exceed the
7 tolerance for restricted eggs permitted in the official standards for U.S. Consumer Grade B eggs
8 under U.S. standards, grades, and weight classes for shell eggs shall be identified as required in
9 ss. 7 CFR 57.800 and 57.860 and shall be:

10 (a) Shipped directly or indirectly to an official egg products processing plant for proper
11 segregation and processing; or

12 (b) Regraded so that they comply with the official standards; or

13 (c) Designated for animal food after being denatured and decharacterized and labeled
14 "Restricted eggs. Not to be used as human food."

15 **ATCP 88.30 Shell egg protection.** EGG SHELL OIL. If oil is used to protect shell eggs,
16 the oil shall meet the requirements of 21 CFR 172.878 and 21 CFR 178.3620(a). Oil having any
17 off odor, or that is obviously contaminated, shall not be used to protect shell eggs. Any shell egg
18 protection oil treatment shall be performed in a manner that prevents egg contamination and
19 preserves egg quality. Eggs with excess moisture on the shell shall not be treated with oil to
20 protect the shell.

21 SUBCHAPTER V

22 PACKING AND LABELING

1 **ATCP 88.32 Egg packing.** (1) EGG PACKING TO MAINTAIN QUALITY. Eggs shall be
2 handled and packed to minimize the likelihood that condensation will accumulate on the eggs,
3 and so that a majority of the packed eggs are placed in the package or shipping container with the
4 small end down.

5 (2) EGG PACKAGE REQUIREMENTS. Egg packages and shipping containers shall be all of
6 the following:

7 (a) Clean and in good condition.

8 (b) Free of mold, mustiness and off-odors.

9 (c) Sufficiently strong and durable to protect eggs from damage during normal
10 distribution.

11 (d) Packing of eggs in used egg cartons shall only be done using clean cartons on which
12 all markings that do not pertain to the eggs being sold, including brand name, USDA shield, date
13 of pack, expiration date, use-by date, quality and size are obliterated.

14 **ATCP 88.34 Egg labeling.** (1) EGG PACKAGES. Except as provided under sub. (3) (a), a
15 package of eggs shall be labeled with all of the following:

16 (a) Information required under ATCP 90, including all of the following:

17 1. A declaration of product identity under s. ATCP 90.02.

18 2. A declaration of responsibility under s. ATCP 90.03. If the responsible person
19 identified on the package is not the person who packed the eggs, the package shall also include
20 the packer identification number or shell egg handler registration number assigned by the U. S.
21 department of agriculture, or the packer identification number assigned by the state in which the
22 packing operation is located. A U.S. department of agriculture (USDA) packer number shall be

preceded by the letter "P". A state packer number shall be preceded by a 2-letter abbreviation which identifies the state.

3. A declaration of net quantity under ss. ATCP 90.04 and 90.08 (16) (c).

4. Nutrition labeling under s. ATCP 90.10 and 21 CFR 101.9.

(b) The grade and size of the eggs, if required under s. ATCP 88.24. The grade and size shall be printed on the principal display panel in letters not less than 3/16 inch high. If the eggs are not graded, the word "UNGRADED" shall be printed in letters at least 1/4 inch high on the principal display panel. Ungraded eggs may be sold from bulk containers if a sign or placard adjacent to the bulk display identifies the eggs as ungraded eggs.

Note: Only eggs graded under USDA's Agricultural Marketing Services' voluntary egg-quality grading program are eligible to be packaged in cartons bearing the USDA grade shield or labeled as "USDA" Grade AA, A, or B. Additional information about USDA's egg grading services may be acquired from the following address: National Supervisor Shell Eggs, USDA-AMS Livestock, Poultry, and Seed Program, Poultry Grading Division, 1400 Independence Avenue, SW, Stop 0258, Washington, D.C. 20250. Telephone: (202) 720-3271.

(c) The statement "KEEP REFRIGERATED" or an equivalent statement indicating that the eggs must be refrigerated. The statement shall be printed on the principal display panel in letters not less than 3/16 inch high.

(d) The statement "SAFE HANDLING INSTRUCTIONS:" in bold type size followed by the statement "To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly." The statement shall be printed in type size no smaller than 1/16 inch and shall appear in a hairline box. The statement shall appear on the principal display panel, the information panel, or the inside lid of the egg carton.

(e) The date on which the eggs were packed. The date of packing may be indicated by an abbreviation consisting of one of the following:

1. The first three letters of the month and the calendar date.

2. The numerically consecutive day of the year, also known as the Julian calendar date.

(f) One of the following dates, in addition to the packing date under par. (e):

1. An expiration date or "sell by" date after which the eggs may not be offered for sale or sold at retail. The period from the packing date until the expiration date may not exceed 30 days, including the packing date. The expiration date or "sell by" date shall be designated by at least the first three letters of the month and the date within that month. The date shall be accompanied by a phrase or abbreviation such as "EXP" or "sell by" which clearly identifies it as an expiration date or "sell by" date.

2. A "use by" date consisting of at least the first 3 letters of the month, and the date within that month. The date shall be accompanied by a phrase such as "use by," "best if used by" or "use before," which indicates that the consumer should use the eggs before that date. The period from the packing date until the "use by" date shall not exceed 45 days, including the packing date.

(2) EGG SHIPPING CONTAINERS. Except as provided under sub. (3), a shipping container of eggs shall be labeled on one end with all of the following information, in letters not smaller than ½ inch high:

(a) A statement identifying the contents of the container.

(b) The name and address of the responsible person in whose name the eggs are packed and distributed. If the responsible person did not pack the eggs, the shipping container shall also include the packer identification number or shell egg handler registration number under sub. (1)

(a) 2. If the responsible person packed the eggs, the packer's identification number or shell egg handler registration number, pursuant to sub. (1) (a) 2., may appear in place of the packer's name and address.

1 (c) The net quantity of eggs contained in the shipping container.

2 (d) The grade and size of the eggs contained in the shipping container, if required under
3 s. ATCP 88.24.

4 (e) The statement "KEEP REFRIGERATED" or an equivalent statement indicating that
5 the eggs must be refrigerated.

6 (f) The date on which the eggs were packed.

7 (g) One of the following dates, in addition to the packing date under par. (f):

8 1. An expiration date or "sell by date" after which the eggs may not be sold or offered
9 for retail sale. The period from the packing date to the expiration date or "sell by" date may not
10 exceed 30 days, including the packing date. The expiration date shall be designated by at least
11 the first three letters of the month and the date within that month. The date shall be accompanied
12 by a phrase or abbreviation such as "sell by" or "EXP" which clearly identifies it as an expiration
13 date or "sell by" date.

14 2. A "use by" date consisting of at least the first 3 letters of the month, and the date
15 within that month. The date shall be accompanied by a phrase such as "use by," "best if used
16 by" or "use before," which indicates that the consumer should use the eggs before that date. The
17 period from the packing date to the "use by" date shall not exceed 45 days, including the packing
18 date.

19 (3) EGGS SOLD OR SHIPPED BY PRODUCER TO AN EGG HANDLER, EXEMPTION. (a)

20 Subsections (1) and (2) do not apply to eggs which are being shipped from an egg producer to an
21 egg handler who packs the eggs.

(b) Subsection (2) does not apply to a shipping container which holds only identical packages of eggs, provided that the packages are identically labeled according to sub. (1) and the label information can be seen through the shipping container.

(4) EGGS SOLD OR SHIPPED BY PRODUCER DIRECTLY TO CONSUMERS. Packages containing eggs which the producer sells directly to household consumers on the premises where the eggs are laid or as part of a community-supported agriculture business shall be labeled with the following:

(a) The egg producer's name and address.

(b) The date on which the egg producer packed the eggs into the carton.

(c) A "sell by" date that falls no more than 30 days after the date on which the eggs were packed into the carton.

(d) A statement indicating that the eggs in the package are ungraded and uninspected.

(5) EGGS REMOVED FROM RETAIL SALE. (a) No eggs may be sold as whole eggs at retail after the expiration or "sell by" date specified for those eggs under subs. (1) (f) 1. or (2) (g) 1. If otherwise used as human food, the eggs shall meet at least the standard for U.S. Consumer Grade B eggs under U.S. standards, grades, and weight classes for shell eggs.

(b) Eggs labeled with dates under subs. (1) (f) or (2) (g) shall retain those dates and may not be repackaged or relabeled with any other dates.

(6) ORGANIC EGGS. No egg may be displayed or sold in a package labeled "organic" unless the practices employed in egg production and handling are in compliance with the national organic program regulations in 7 CFR part 250, or any rules promulgated by the department under s. 97.09 (5), Stats.

ATCP 88.36 Labeling of baluts. Each container of baluts shall be clearly and conspicuously labeled to inform the consumer that the product is a “balut” or an “incubated fertile egg” or such other term or phrase that is informative and not false or misleading. The label should clearly indicate that the container of baluts should be stored at a temperature 41°F or less.

ATCP 88.38 Deceptive practices. No person may do any of the following in connection with the sale or distribution of eggs:

(1) Misrepresent the grade, size, or quality of the eggs, the date on which the eggs were packed, or the “sell by” or “use by” dates of the eggs.

Note: Terms such as “super jumbo” or “super one dozen,” are examples of misrepresentations under subsection 1.

(2) Make any unauthorized nutrient content or health claims that do not comply with the requirements of 21 CFR part 101.

(3) Sell, offer for sale, or distribute eggs in any misbranded package or shipping container.

(4) Offer for sale or sell eggs without clearly indicating the grade and size of the eggs or that they are ungraded.

(5) Offer for sale or sell eggs laid by a species other than chicken, without clearly indicating the species of bird that laid the eggs.

(6) Represent that eggs are fresh unless they conform to grade standards specified for grade A or grade AA eggs under the federal egg grading act.

SUBCHAPTER VI

RECORDKEEPING, RECALL PLANNING, AND ENFORCEMENT

1 **ATCP 88.40 Dealers buying eggs from producers; receipts.** (1) An egg producer who
2 sells eggs to any person for resale shall keep a written record of the sale.

3 (2) Records for eggs sold by grade or size shall include all of the following:

4 (a) The grades and sizes of the eggs sold by the producer, including the number of dozen
5 and price per dozen sold in each grade and size category. Grades and sizes shall be determined
6 according to s. ATCP 88.24.

7 (b) The date on which the eggs were graded.

8 (c) Whether the eggs were graded by or for the person purchasing the eggs from the
9 producer.

10 (3) A person required to give a receipt, pursuant to sub. (1), shall keep a copy of the
11 receipt for at least one year, and shall make the receipt available to the department for inspection
12 and copying upon request.

13 **ATCP 88.42 Recall plan.** (1) **PLAN REQUIRED.** An egg handler shall have a written plan
14 for identifying and recalling eggs processed at that egg handling facility, should a recall become
15 necessary. The egg handler shall update the plan as necessary, and shall make it available to the
16 department for inspection and copying upon request.

17 (2) **PLAN CONTENTS.** A plan pursuant to sub. (1), shall do all of the following:

18 (a) Identify key individuals or positions that are responsible for planning, approving and
19 implementing recalls on behalf of the egg handler.

20 (b) Identify key individuals or entities to be contacted or consulted in connection with a
21 recall.

22 (c) Include procedures for the routine identification, dating and tracking of egg lots, so
23 that in a recall the affected lots can be identified and distinguished from unaffected lots.

1 (d) Include procedures to enable routine identification, dating and tracking of egg
2 shipments from the egg handling facility. Tracking shall identify shipment recipients and
3 contents, cross-referenced to lots, so that in a recall recipients of affected lots can be contacted.

4 (e) Include procedures for determining the nature and scope of a recall, including affected
5 egg lots, shipments and shipment recipients.

6 (f) Include procedures for identifying and communicating with affected persons,
7 including suppliers, egg shipment recipients, down-line buyers, consumers, government agencies
8 and others.

9 (g) Identify potential target audiences for recall information, including consumers,
10 distributors and government agencies.

11 (h) Identify potential methods for communicating with target audiences under par. (g).

12 (i) Identify key information, including the identity of the affected eggs, the reason for the
13 recall, and suggested actions to be taken by affected persons, which may be necessary to
14 communicate in a recall.

15 **ATCP 88.44 Enforcement.** A person who violates this chapter may be prosecuted under
16 ss. 93.21 and 97.72, Stats.

17 **SECTION 9. EFFECTIVE DATE.** This rule takes effect on the first day of the month
18 following publication in the Wisconsin administrative register, as provided under s.
19 227.22(2)(intro.).

Dated this _____ day of _____, 2014.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Egg grading, handling, and labeling
Adm. Code Reference: ATCP 88, 70, and 75
Rules Clearinghouse #: CR 14-037
DATCP Docket #: 13-R-05

Rule Summary

This proposed rule comprehensively revises ATCP 88, Wis. Adm. Code, to clarify the regulatory requirements applicable to egg producers and egg handlers. The proposed rule makes minor revisions to ATCP 70 and 75 and moves primary egg regulation to ATCP 88, thus limiting the need for egg business operators to consult multiple chapters of rules. The rule consolidates in ATCP 88 regulations regarding licensing of egg processing and sales, and requirements for facilities, equipment and utensils, packaging, and labeling at egg handling operations. The rule implements 2013 Wisconsin Act 245, by eliminating the requirement for small-scale egg producers to hold a food processing plant license to gather, package, and store eggs which will be sold to consumers at a farmers' market, on an egg route, or at the egg producer's farm. It also exempts producers from obtaining a retail food establishment license when selling eggs to consumers on the producer's farm or as part of a community-supported agriculture business. The proposed rule removes obsolete provisions in the existing rule and incorporates explanatory text to improve rule clarity. The rule spells out federal registration requirements that must also be met by some egg producers and egg handlers.

Small Businesses Affected

The rule will impact egg producers and egg handlers of all sizes. This rule is expected to have a positive impact on small-scale egg producers with flocks of not more than 150 birds as it removes the requirement to obtain and pay the fee for a food processing plant license if the producer gathers, packages, and stores eggs to be later sold to consumers on the site where the eggs are produced, at farmers' markets, or on egg sales routes. It also exempts producers from obtaining a retail food establishment license when selling eggs to consumers on the producer's farm or as part of a community-supported agriculture business. It assists all egg-related businesses by clarifying and consolidating existing regulatory requirements specific to egg production establishments, making it easier for businesses to understand and meet critical requirements to protect the public from foodborne illness. Some licensed egg handling operations may need to upgrade facilities, e.g. sinks, walls, temperature monitoring devices, in order to meet the requirements in the rule. The rule does not increase license fees.

Reporting, Bookkeeping and other Procedures

The rule does not require any additional reporting or bookkeeping procedures for small producers. The rule incorporates registration requirements for large producers, as required under federal law. The rule also requires Wisconsin egg handlers who receive eggs from producers who own 3,000 or more laying birds to maintain records showing that the producers are registered, as required under the federal egg safety rule, with the Food and Drug Administration (FDA). The FDA requires producers with 3,000 or more laying birds to register and meet federal requirements to reduce the risk of *Salmonella* Enteritidis contamination, a significant food safety hazard associated with eggs. Registration allows FDA to identify and inspect these large-scale egg producers. By requiring egg handlers to maintain documentation demonstrating compliance with FDA registration requirements, Wisconsin inspectors will be able to quickly and efficiently ensure that eggs entering the marketplace from these large-scale egg producers have been produced subject to federal SE reduction requirements.

Professional Skills Required

The proposed rule does not require small businesses to acquire any new professional skills.

Accommodation for Small Business

The proposed rule creates a new exemption from food processing plant licensing for egg producers with not more than 150 laying birds who sell eggs to consumers at farmers' markets, on egg-sales routes or at the location where the eggs are produced. The rule also exempts producers from obtaining a retail food establishment license when selling eggs to consumers at the producer's farm or as part of a community-supported agriculture business.

Conclusion

The provisions in this proposed rule will benefit Wisconsin's egg production industry.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this 29th day of August, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Steven C. Ingham
Steven C. Ingham, Administrator,
Division of Food Safety

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

ATCP 88-Egg Grading, Handling and Labeling; ATCP 70, Food Processing Plants; and ATCP 75, Retail Food Establishments

3. Subject

Regulation of Egg Grading, Handling, Packaging, Labeling, and Retail Sales, and affecting small business.

4. Fund Sources Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected
129

6. Fiscal Effect of Implementing the Rule

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget
		<input type="checkbox"/> Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

<input checked="" type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
	<input checked="" type="checkbox"/> Small Businesses (If checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

This rule modifies ATCP 88, Wis. Adm. Code, related to egg grading, handling and labeling; ATCP 70, Wis. Adm. Code, related to food processing plants; and ATCP 75, Wis. Adm. Code, related to retail food establishments. The rule involves a comprehensive re-write of ATCP 88 to provide clarity for determining the regulatory requirements that an egg producer or egg handler must meet. Minor revisions in ATCP 70 and 75 defer primary egg regulation to ATCP 88 and clarify licensing requirements for sources of eggs procured for retail sale. By setting forth requirements for licensing, facilities, equipment and utensils, egg handling operations, packing and labeling, recordkeeping and recall planning in ATCP 88, the rule practically eliminates the need for a small egg-business operator to read multiple chapters of rules. The rule will help businesses by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs at a farmers' market, on an egg route, or at the egg producer's farm, or a retail food establishment license when selling eggs to consumers at the producer's farm or as part of a community-supported agriculture business. The rule clarifies licensing requirements for sale of eggs to, or by, community-supported agriculture businesses. The rule removes obsolete provisions in the existing rule. The rule provides explanatory text to improve rule clarity and spells out federal registration requirements which must also be met by some egg producers and egg handlers.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The Department contacted Wisconsin egg producers, including those represented by the Wisconsin Poultry and Egg Industries Association. In addition, DATCP contacted an officer of the Wisconsin Association of Local Health Departments and Boards (WALHDAB) to solicit information regarding local health department agents who carry out retail food establishment oversight.

11. Identify the local governmental units that participated in the development of this EIA.

Some local governmental units operate under contract with DATCP to inspect retail food establishments, which includes egg producers selling eggs directly to consumers on egg sales routes and at farmers' markets. WALHDAB was consulted as a representative of local government. However, since the rule will not change current practices related to retail food

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

establishment licensing, there is no impact on local governmental units.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Very small egg producers: This rule will benefit small egg producers as it removes the requirement to obtain a food processing plant license to gather and pack eggs from their flock that are subsequently sold to consumers at farmers' markets and on egg sales routes. Under the Wisconsin Food Code, any food sold at a licensed retail food establishments, which includes farmers' markets and egg sales routes, must be acquired from an approved source. Previously, to be considered as coming from an approved food source, the food effectively must have come from a licensed food processing plant. This rule will no longer require an egg producer with a flock of not more than 150 laying birds to obtain a food processing plant license for gathering, packing, and storing eggs to be sold later by the producer under a retail food establishment license. Annual food processing plant licenses fees for small establishments are \$95. Under the rule, very small egg producers will have to label eggs and maintain eggs for sale at a temperature of 41 degrees or less.

Egg producers as a whole: The rule does not include new regulatory requirements, but consolidates and clarifies requirements that were previously located in multiple administrative rule chapters in one rule, making it easier for egg producers to meet important food safety regulations. Some licensed egg handling operations may need to upgrade facilities, e.g. sinks, walls, temperature monitoring devices, in order to meet requirements in the rule. The rule will not increase licensing fees.

Local governmental units: This rule is not anticipated to have a fiscal impact on local government units. Forty-four local health agencies issue retail food establishment licenses and conduct retail food establishment inspections under contract with DATCP. The rule exempts small egg producers from food processing plant licensing if they sell eggs directly to consumers at the location where the eggs are laid, at a farmers' market, or on an egg sales route. However, food processing plant licenses are administered by DATCP and this exemption will not impact local governmental units. DATCP also issues retail food establishment licenses and conducts retail food establishment inspections in jurisdictions not covered by a local health agent contract and the rule will have no impact on local governmental units in these jurisdictions. The rule may encourage some very small egg producers to seek a retail food establishment license to sell eggs directly to consumers on egg sales routes or at farmers' markets. The number of very small egg producers who may seek licensure cannot be determined.

Public Utility Rate Payers: The rule will have no impact on public utility rate payers.

State's economy: According to USDA, egg production is growing in Wisconsin. Wisconsin produced 1.48 billion eggs in 2013, representing an 8 percent increase in egg production from 2012. Wisconsin also increased its rank nationally one place to become the 17th largest egg producer in the country in 2013. Simplified regulations will support this important contribution to the state's agricultural economy.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule clarifies existing requirements for egg producers by consolidating regulations related to the safe handling and proper labeling of eggs into one rule. The rule will make it easier for egg production businesses to understand and meet requirements that are designed to protect public health and prevent foodborne illness outbreaks. Failing to consolidate these requirements would perpetuate confusion among small-scale egg producers. The rule exempts very small egg producers from having to acquire two types of license in order to sell eggs directly to consumers. There is no alternative to this exemption since it was mandated by 2013 Wisconsin Act 245.

14. Long Range Implications of Implementing the Rule

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These rules will reduce regulatory requirements faced by businesses while still protecting the public from foodborne illness. Many consumers prefer to buy locally-produced foods, in particular foods directly from a farmer. The rule exemptions will increase consumer access to locally-produced eggs. Nevertheless, eggs are a potentially hazardous food, meaning they must be handled properly and stored at a proper temperature to avoid contamination and growth by pathogens. Salmonella Enteritidis (SE) is the most common pathogen associated with eggs and the risk of SE infection is increased when proper refrigeration is not practiced. The rule retains refrigeration requirements for egg producers exempted from food processing plant licensing. The rule consolidates regulations related to eggs, making it easier for egg producers to meet requirements.

15. Compare With Approaches Being Used by Federal Government

In general, rules designed to ensure egg safety and consistent quality and marketing of eggs cover activities related to: 1) flock health and farm sanitation; 2) egg grading, sanitation, temperature control, packaging, and labeling at egg processing facilities; and 3) transportation, handling and storage of eggs for the retail sale. Federal egg regulations consist of several rules involving two agencies, each responsible for different activities designed to promote production and sale of eggs and consistent egg quality and marketing.

The Egg Products Inspection Act (Title 21 USC, Chapter 15) authorized the USDA to create regulations (7 CFR Part 57) for egg processing operations. Egg processing operations, defined in the revised ATCP 88 as "official egg products plants," generally make products other than shell eggs, such as pasteurized whole eggs and dried egg whites. Additional USDA regulations, created under this act, authorize at least yearly inspection of hatcheries and at least quarterly inspection of businesses that pack shell eggs for the ultimate consumer. As part of these inspections, USDA assures that egg packages are labeled "Keep Refrigerated" and stored at 45°F or less. For eggs moving in interstate or foreign commerce, federal law and regulations pre-empt state statutes and regulations relating to temperature control, quality or grade, condition, weight or quantity. A voluntary egg grading service is administered by USDA under the authority of the Agricultural Marketing Act of 1946 as amended (Title 7 USC, Chapter 1621 et seq.; referred to in revised ATCP 88 as the "federal egg grading act") and requirements formerly found in 7 CFR part 56, but now available as guidance from USDA's Agricultural Marketing Service (AMS 56), using essentially the same egg grading standards which are contained in revised ATCP 88.

Under the Federal Food, Drug and Cosmetic Act (Title 21 USC, Chapter 9), and the Public Health Service Act (Title 42 USC, Chapter 264), the US Food and Drug Administration (FDA) has enacted egg safety regulations (21 CFR 16.5 (a) (5) and 21 CFR part 118, now referred to in ATCP 88 as the "federal egg safety rule") applying to shell egg producers with 3,000 or more laying hens at a particular farm, who are not selling all of the eggs directly to consumers or are transporting eggs for processing. The regulations require these egg producers to register with FDA and to develop a written Salmonella Enteritidis prevention plan for each farm. The plan must address procurement of chicks, environmental testing, cleaning and disinfection, biosecurity, pest control, and egg refrigeration. The regulations also require testing of eggs for Salmonella Enteritidis.

One objective of this rulemaking process is to clearly differentiate Wisconsin's requirements and those of federal agencies in regulating egg packaging and sales.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois requires egg producers to hold a limited or full license, costing \$15 and \$50, respectively. Illinois also assesses a per-case inspection fee on eggs sold in-state. Egg producers are not required to hold an Illinois egg license to sell nest-run eggs from the producer's flock to household consumers for the consumers' own personal use. The eggs must be sold on the premises where the flock is located. Producers who sell eggs to licensed grading stations also do not require an Illinois egg license. A limited Producer-Dealer egg license is required for producers selling graded eggs from their own flock of fewer than 3,000 birds when the eggs are sold off the premises from where the flock is located. Egg producers who sell eggs from their own flock of 3,000 or more birds or eggs from another producer's flock, off the premises where their flock is located, are required to obtain a full Producer-Dealer egg license. Wholesale and retail sales of eggs must meet all requirements found in the Illinois Egg & Egg Products Act.

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Iowa requires handlers of candled and graded eggs to hold a license, the cost of which is based on the number of eggs sold in a "snapshot" month. The fee ranges from \$15 for egg handlers who purchase or handle fewer than 125 cases in the month of April of a calendar year to \$250 for those who purchase or handle 10,000 cases or more during that month. Producers who sell eggs exclusively from their own flocks directly to handlers, or to consumers, are exempt from licensing.

Michigan does not require a license for selling eggs obtained from flocks of fewer than 3,000 laying hens if the sales are made directly to consumers. Any other sales, including those transacted with consumers by internet, mail, or consignment, are only allowed if the seller holds a license costing \$175.

Minnesota assesses an annual inspection fee, based on number of eggs sold, which ranges in cost from \$12.50 to \$312. A food handler license is also required for certain sales. The cost of a food handler license is based on the gross annual food sales and ranges from a fee of \$77 for establishments with gross annual food sales of less than \$50,000 to a fee of \$2,001 for establishments with gross food sales of over \$25 million. Producers may sell eggs directly from their farm to individual customers without meeting any licensing, registration, or inspection requirements. Producers may also sell eggs at farmers' markets without licensing or registration, but the eggs must be candled, labeled with the producer's name and address and kept at a temperature of 45° F or colder. Producers with fewer than 3,000 hens may sell eggs to grocery stores, restaurants or other food businesses without a license if they register with the Minnesota Department of Agriculture (MDA). There is no fee for registration and no routine inspection of the producer, although MDA may inspect the premises if they receive a complaint about the producer.

Currently, Wisconsin egg handlers must hold a food processing plant license (potentially hazardous foods category), with the license fee based on annual sales and ranging from a fee of \$95 for establishments with annual sales of less than \$25,000 to a fee of \$835 for food processors with annual sales of at least \$250,000. Wisconsin currently also requires egg producers who sell eggs directly to consumers at venues other than their farms, such as at a farmers' market, to hold a retail food establishment license. The fee for a retail food establishment license issued by DATCP ranges from \$45 to \$685, depending on the scope of the establishment and its total annual sales. Small egg producers typically pay \$45. If the retail sales occur in jurisdictions where local health agents are under contract with the department to conduct retail food establishment inspections, the fees may differ. This revision to ATCP 88 features exemptions from the food processing plant license requirement for a producer who sells eggs from a small flock directly to consumers at specified venues, and producers who sell only nest-run eggs to egg handlers. This approach is consistent with that taken in neighboring states to minimize regulatory costs for small-scale direct-sale egg producers.

USDA grading standards are adopted in each of our neighboring states and those standards generally require that eggs sold to retailers must be Grade B or better. Illinois, Iowa, and Minnesota require candled eggs to be stored at 45° F or colder. Michigan requires eggs to be held and transported at no more than 45° F ambient temperature beginning 36 hours after the time of laying. Illinois requires nest-run eggs to be held at 60° F or less at all times. Since temperature control is an essential means of protecting the public from egg-borne illnesses, the Wisconsin rule requires eggs handled by licensed operators to be kept at 45° F or colder before and after packing and during transport, and 41° F or colder for retail sale. Illinois, Iowa and Minnesota require record-keeping associated with graded-egg sales and retention of these records for varying lengths of time. Wisconsin's rule is consistent with neighboring states in this regard.

17. Contact Name	18. Contact Phone Number
Pete Haase, Director-Bureau of Food Safety and Inspection	608 224-4711

This document can be made available in alternate formats to individuals with disabilities upon request.

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Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Small egg producers. The rule is expected to benefit small egg producers and reduce the financial and regulatory burden of acquiring a food processing plant license.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Solicited input on the economic impact from the Wisconsin Poultry and Egg Industries Association.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☒ Less Stringent Compliance or Reporting Requirements
☒ Less Stringent Schedules or Deadlines for Compliance or Reporting
☒ Consolidation or Simplification of Reporting Requirements
☒ Establishment of performance standards in lieu of Design or Operational Standards
☒ Exemption of Small Businesses from some or all requirements
☐ Other, describe:

-
4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The rule reduces the impact by implementing 2013 Wisconsin Act 245 and creating an exemption from meeting full-scale food processing plant licensing and regulations for egg producers with flocks of not more than 150 birds if they sell eggs directly to consumers at farmers' markets, on egg-sales routes, or on the premises where the eggs are laid.

-
5. Describe the Rule's Enforcement Provisions

The rule does not modify existing enforcement provisions related to egg handling, labeling, grading or sales. All food, dairy and state-inspected meat businesses are regulated under Chapter 97 of the Wisconsin Statutes. Enforcement provisions for these businesses are outlined in s. 97.72 and 97.73 and apply to both small and large businesses.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No
